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No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY
PERFECTION SPINNING COMPANY, LINFORD MILLS, INC.

RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 137-147) is reported in 165F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1) are reported in 70 N. L. R. B. 614.

STATEMENT

The essential facts are as follows:

The Respondents are four separate and distinct North Carolina Corporations, each owing and operating a cotton mill in North Belmont, an unincorporated town some two and one-half miles from the center of the City of Belmont, North Carolina (R. 39).

A lodge of the Patriotic Order Sons of America (referred to as P. O. S. of A.), a national patriotic order, was organized in the town in 1929. Its membership was largely, though not entirely, composed of employees of the North Belmont Mills (R. 38, 119, 123).

For several years the lodge met in the village school building. In 1937 they decided to build a lodge hall and offered to purchase for a site a vacant lot which was owned in common by the Respondents. The owners advised them that they were considering erecting on the lot a building for store rooms and a post office, and offered to put a hall on the second floor and let the Order use it for its lodge room. This was agreed to and the building was erected and the P. O. S. of A. was given the use of the hall rent-free, with the understanding that it was not to be used for any other purpose (R. 35, 36, 120).[1]

[1]On page 4 of Petitioner's brief near the bottom it is incorrectly stated: "This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities." The evidence is to the effect, and the Board found (R. 8), that the building was constructed "for the dual purpose of providing store space for the convenience of employees, and a meeting place for members of P. O. S. of A., who for some years had been using the school house auditorium." The Board found further (R. 8): "As to the arrangements under which the P. O. S. of A. was permitted use of this company-owned property, Stowe credibly testified without contradiction that it was built especially for the Patriotic Sons of America to hold their meetings in and was not to be rented to anybody else.' He also testified: '. . . we told the Patriotic Sons of America that we were going to let them use the building free of rent, but were not going to allow it to be rented for any (other) purposes.'"

The P. O. S. of A. lodge has occupied the hall since 1937. Occasionally church suppers and like affairs have been held in the hall and in the spring of 1945 a safety school was held there (R. 43).[2]

In January 1945 Harris, a union organizer, sought to obtain permission to use the hall for a union meeting. The request was refused by D. P. Stowe, the man who controlled the building for the owners.

Charges of unfair labor practices were filed by the union (Textile Workers Union of America, C. I. O.). After the usual proceedings the National Labor Relations Board found that in refusing the use of the hall to the union the Respondents had interferred with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof, and issued its order requiring that the respondents, upon request, grant to all persons employed in Respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. The Respondents refused to comply, and upon the Board's petition to the Circuit Court of Appeals for enforcement of the Board's order, that court refused to enforce the order upon the grounds that if the employers had permitted the union to use the hall they would

[2]On page 9 of Petitioner's brief it is incorrectly stated: "The Board found that in view of employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes 'constituted unlawful disparity of treatment and discrimination against the Union.'" The Board did not find that it was the employers' practice to permit the hall to be used by all other groups and organizations (R. 9). In the Summary of Argument and in the Argument in the Board's brief it is stated several times that the employers permitted the hall to be used for all other types of meetings. The Board did not so find, and such was not the case.

have risked a charge that they had violated Section 8 (2) of the Act (R. 141-142), and that the order violated the due process clause of the Fifth Amendment by compelling the companies to surrender their other (than plant) property against their will (R. 142, 145).

SUMMARY OF ARGUMENT

I

The Board's order, if sustained, would be violative of the provision of Subsection 8 (2) of the National Labor Relations Act, which makes it unlawful for an employer to contribute financial aid or other support to any labor organization.

The proposed meeting was to be for the employees of Stowe Spinning Company only. That company did not own the hall. It owned only a one-fourth interest in it. The other companies were not required to permit Stowe's employees to use their property. The hall was not on the mill premises of any of the Respondents. It was 500 yards from Stowe's plant. It was not a public or community hall but was built especially for a lodge room for the Patriotic Order Sons of America, with the understanding that it was not to be used by any other organizations. In refusing to permit the use of the hall for a union meeting the Respondents were following the decisions of the courts. The Board's order would require the Respondents to furnish the hall rent-free to the employees of any of them and to any labor organization for all time to come, which would violate the Act.

II

The Board's order, if sustained, (1) would sanction the taking of private property by private persons without due process of law and (2) would be a taking by the government of private property for the use of private persons without due process of law, and, therefore, would be violative of the Fifth Amendment to the Constitution of the United States.

The purpose of the Act is to protect interstate commerce from disruption, and, as a means to that end, to guarantee to employees the right of self-organization and collective bargaining, but these rights must be exercised within constitutional authority. The action of the Board in this case went beyond the powers granted it by Congress (or that Congress had the power to grant it) and infringed the constitutional rights of Respondents. Neither the Board, an agency of the government, nor the courts, a branch of the government, has the power under the Constitution to authorize the taking of private property for a private use. Even if the Respondents' refusal to permit the use of the hall was motivated by a desire to impede unionization, this did not nullify the constitutional guaranty against deprivation of their property without due process of law.

ARGUMENT

I

Whatever may be the right of employees to use in their union activities property of the employer connected with its business of manufacturing and distributing goods in interstate commerce, such right does not extend to the employer's other property.

THE HALL DID NOT BELONG TO STOWE SPINNING COMPANY.

The Stowe Spinning Company owned only a one-fourth interest in the hall (R. 34 and 109).

The proposed meeting was for the employees of Stowe Spinning Company only (R. 67). The Board's Order would compel the other mills to furnish property for Stowe's employees to meet in.

The cease and desist order issued against all the Respondents, if carried out, would require the Acme, Perfection and Linford Companies, who own each a one-fourth undivided interest in the hall, to permit the use of their property by the employees of Stowe Spinning Company, to whom they owe no duty under the Act.

HALL IS NOT ON MILL PREMISES.

The hall in question is not on the mill premises of any of the Respondents, or used by any one of them in its mill business, but is in a business building in the business district of the town of North Belmont, housing on the ground floor a grocery store and the United States Post Office, and on the second floor the Patriotic Order Sons of America Lodge. The property is owned jointly by the four respondents.

THE HALL IS NOT A PUBLIC OR COMMUNITY HALL.

The building in which the hall is located is in no way connected with the cotton manufacturing business of any of the Respondents. It was built to house a post office, grocery stores and a lodge room for the Patriotic Order Sons of America, a national patriotic order. The Order was given the use of the hall rent-free with the understanding and upon the express condition that it was not to be used for any other purpose (R. 35). It had been used as a lodge hall by the P. O. S. of A. for eight years. The fact that it was used occasionally for church suppers and other purposes did not convert it into a community hall. It was private property and the owners had a perfect right to restrict its use by others. The fact that they did not register an objection when the Order permitted it to be used occasionally for other purposes did not estop them to refuse its use for any purpose, with or without cause. It did not convert the hall into a community hall or a public hall open to all comers. The union had no more right than anybody else to use the hall against the will of the owners.

In the Petitioner's brief emphasis is placed on the fact that permission was granted to others to use the hall as a meeting place; and it is asserted that, "the P. O. S. of A. meeting hall was thus used by the employee-townsfolk in this case no less freely than the streets in the *Marsh* case were used by the general public." (Bottom of page 31 and top of page 32 of Petitioner's brief.) That statement is not in accord with the facts. Throughout the brief Petitioner seeks to show that the hall was wide open to any group that might wish to use it; whereas, the evidence shows that during a period of 8 years churches had banquets in it once in a while (R. 43), the Ladies Aid Society used it once or twice, one Christmas party was held there, and a safety school was held there for

three weeks during the Spring of 1945 (R. 44). The Petitioner sees no distinction between these infrequent permissive uses of the hall and the use of streets by the general public and argues that because these uses were permitted the owners lost their constitutional rights to control the use of the property.

Whether Black, an officer of the lodge, did or did not tell Harris he could have the hall for the meeting is immaterial. The evidence is uncontradicted that the hall belonged to the Respondents and that it was furnished rent-free to the P. O. S. of A. lodge upon the condition that it was not to be used by any other organization. If Black attempted to violate the terms of the agreement he "overstepped his bounds," and the owners had a right to demand compliance with the condition. The fact that the hall had occasionally been used for church suppers and other events in the course of eight years did not change the terms on which the lodge was granted the use of the hall or deprive the owners of the right to demand that the terms of the agreement be complied with. Black's actions are not determinative of the issue. D. P. Stowe's are. He represented the owners. As their agent he refused to let Harris, a union organizer, have the hall to hold a union meeting in, which was a compliance with rather than a violation of the provision of the Act, which forbids an employer to furnish support to a union. The owners (acting through D. P. Stowe) were within their constitutional rights in refusing the use of the hall. They were also following the decision of the courts.

IN REFUSING TO PERMIT THE USE OF THE HALL THE RESPONDENTS WERE FOLLOWING COURT DECISIONS.

The refusal of the owners of the P. O. S. of A. hall to permit the use of the hall for a union meeting occurred on

January 26, 1945 (R. 7). In June of the preceding year the Circuit Court of Appeals of the Fifth Circuit had said in the *LeTourneau* case, 143 F. 2d 67: "Under the National Labor Relations Act it is well settled that the employer cannot 'interfere' with any effort of the employees to organize, either to encourage or prevent it. He cannot facilitate the organization even by providing a meeting place without incurring the charge that he is attempting to dominate it . . . It may be wisest and best for all concerned that the employees discuss and act on the matter of their own organization elsewhere than on the employer's property."

It was not until April 23, 1945, three months after the refusal complained of in the instant case took place, that this Court reversed the lower Court in the *LeTourneau* case. So far as the Act had been interpreted at the time of the refusal the owners of the hall would have been guilty of violation of the Act if they had permitted the hall to be used for the meeting. Besides, while this Court overruled the Circuit Court in that case and held that prohibiting the distribution of union circulars on the parking lot provided for the employees was a violation of the Act, the case is not authority for the position that an employer must provide and maintain a hall for union meetings. Any lawyer, in view of the *LeTourneau* case, would have advised the owners by all means to refuse the use of the hall for union purposes.

The Respondents were in a position where they had to watch their step. To refuse or not to refuse, that was the question. They chose the course suggested by a highly respectable court, which was the last word on the subject.

In numerous cases where employers have been charged with giving support to an intermural union the Board has found and held that the employer's furnishing a meeting

place to such a union constituted support within the meaning of Section 8 (2).

Indeed, in the Brief for the National Labor Relations Board, filed in this court, in the *LeTourneau* case, which is urged as authority for the Board's action in this case, it was stated: "It is true, of course, that an employer's grant to a labor organization of such valuable facilities as a meeting place, bulletin boards, clerical or legal services and the like, constitutes support within the meaning of Section 8 (2)." In support of the assertion that granting a meeting place constitutes such support, the following cases were cited:

Matter of Berkshire Knitting Mills, 46 N. L. R. B. 955, 977, enforced, 139 F. (2d) 134, 139 (C. C. A. 3), certiorari denied, 322 U. S. 747; *Matter of Cudahy Packing Co.*, 17 N. L. R. B. 302, 316, enforced, 118 F. (2d) 295 (C. C. A. 10); *Matter of Western Garment Mfg. Co.*, 10 N. L. R. B. 567, 570, 573; *Matter of J. Greenebaum Tanning Co.*, 25 N. L. R. B. 672, 675, 684, 685, enforced by consent, January 26, 1942 (C. C. A. 7); *Matter of Virginia Electric & Power Co.*, 44 N. L. R. B. 404, 415-418, 425, enforced, 319 U. S. 533; *Matter of Hancock Brick & Tile Co.*, 44 N. L. R. B. 920, 924; *Matter of Norfolk Shipbuilding & Drydock Corporation*, 12 N. L. R. B. 886, 891, 893, enforced, 109 F. (2d) 128, 129 (C. C. A. 4); *Matter of Houde Engineering Corp.*, 42 N. L. R. B. 713, 722, 725; *Matter of Carlisle Lumber Co.*, 2 N. L. R. B. 248, 270-271, enforced, 94 F. (2d) 138, 143 (C. C. A. 9), certiorari denied, 304 U. S. 575; *Matter of Lane Cotton Mills Co.*, 9 N. L. R. B. 952, 969-970, enforced, 111 F. (2d) 814, 816 (C. C. A. 5); *Matter of Bradford Dyeing Assn.*, 4 N. L. R. B. 604, 613-614, enforced, 310 U. S. 318, 335.

The employers in those cases were found to have given support in the manner following:

In the *Berkshire Knitting Mills* case, by permitting an employee's association to use the recreation hall in the company-owned dispensary building for meetings and for other purposes while denying such use to the union.

In the *Cudahy Packing Company* case, by permitting use of a hall for a union meeting.

In *Matter of Western Garment Manufacturing Co.*, by inviting and permitting the union to meet in the factory lunch room.

In *Matter of J. Greenebaum Tanning Co.*, by permitting an intermaural union to meet on company property.

In *Matter of Virginia Electric & Power Co.*, by permitting a company-wide unaffiliated labor organization to meet on company-owned property.

In *Matter of Hancock Brick & Tile Co.*, by permitting its employees to meet in the company's garage to organize a "company union."

In *Matter of Norfolk Shipbuilding & Drydock Corporation*, by permitting its employees to meet on company property to organize a company union.

In *Matter of Houde Engineering Corporation*, by providing without cost meeting facilities to a company union.

In *Matter of Carlisle Lumber Co.*, by permitting a company union to meet in company's club house.

In *Matter of Lane Cotton Mills Company*, by allowing a meeting for the purpose of organizing an "Independent organization" to be held in the recreation room of the respondent.

In *Matter of Bradford Dyeing Assn.*, by permitting an "Employees Federation" to meet in the Bradford Social Club, which property was owned by the respondent.

All those cases involved the furnishing of support to

"company unions," but surely the same rules would apply in the case of any other sort of union.

The very obvious distinction between the instant case and the line of cases relied on by the petitioner was drawn by the Circuit Court of Appeals for the Sixth Circuit in the case of *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147, which was decided since this case was decided in the lower court. Said the court:

"In our opinion, it (the Stowe case) involved an entirely different question and is not applicable. Free use of a company's private property for purposes of union organization, rather than access to employees in the property, was the issue. The employees neither lived in the property involved, nor, as a matter of right, spent any of their time there."

ORDER OF BOARD WOULD REQUIRE RESPONDENTS TO MAINTAIN THE HALL FOR ALL TIME FOR UNION PURPOSES.

The order (R. 22) requires that the respondents, upon request, grant to all persons employed in respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. There are no limitations as to time or circumstances. Literally interpreted (if the order is sustained) this means that the owners can never devote the space now occupied by the hall to other purposes, or lease it or sell it, without being guilty of contempt of court. The owners would be required to keep the hall open perpetually, under any and all circumstances, for the use of the employees in their union activities and for the use of any labor union (whether party to this action or not) that might wish to use it. That would be an unwarranted control of private property by the government, in violation of the

respondent's constitutional rights. It would also establish the clear-cut principle that it is the duty of an employer to maintain a hall for its employees to meet in for union activities. This, we submit, is beyond the requirements of the Act.

II

The Board's Order, if sustained, (1) would sanction the taking of private property by private persons without due process of law and (2) would be a taking by the government of private property for the use of private persons without due process of law, and therefore, would be violative of the Fifth Amendment to the Constitution of the United States.

The purpose of the Act is to protect interstate commerce from disruption, and, as a means for the accomplishment of that purpose, to guarantee to employees the right of self-organization and collective bargaining. But, like every other right, these rights must be exercised in a lawful manner and with due regard for the rights of others.

RIGHTS OF ASSEMBLY AND FREE SPEECH.

Petitioner takes the position that the constitutional rights of assembly and free speech overbalance constitutional rights of private property. Board's brief, page 24, declares: "Freedom of speech, as the cases hold, is entitled to greater protection from legislative regulation than any claim of unfettered right to do as one will with one's property." As authority for this statement the case of *Murdock v. Pennsylvania*, 319 U. S. 105, 115, is cited. The case does not so hold. It deals with the right of a city to prohibit a person to sell religious literature in the city without first obtaining a license. The other cases cited in support of Petitioner's contention do not support it. The rights of freedom of assembly and freedom of

speech do not include the right to assemble and speak on somebody else's property against his will. In the case of *Thomas v. Collins*, 323 U. S. 516, 533-534, referred to in Petitioner's brief (pp. 18, 20, 29) there was no question of private property. In that case Thomas insisted on speaking to a mass meeting in the City Hall without first obtaining an organizer's card as required by Texas law. The Court held that the Texas Statute as applied contravened the Constitution of the Unied States.

That case and the *Hague* case, 307 U. S. 496, 515-516, cited in Petitioner's brief in the same connection (pp. 29, 35) deal with the attempted interference by a State with the rights of assembly and free speech. Neither is authority for Petitioner's contention here that one's private property can be taken by another in order to enable that other to enjoy those rights.

Marsh v. Alabama, 326 U. S. 501, 508, cited on pages 16, 28, 29, 30, 32, 34, 36 of Petitioner's brief, deals with the distribution of reljgious literature on the public streets of a company-owned town.

As to *Republic Aviation Corp. v. N. L. R. B.* and *N. L. R. B. v. LeTourneau Company of Georgia*, cited numerous times in Petitioner's brief: In the *Republic* case an employee was discharged for infraction of a company rule against soliciting in the factory. He passed out application cards on his own time during lunch periods. In the *LeTourneau* case two employees were discharged for distributing union literature on a parking lot furnished by the employer for use of its employees. In each case the employees were rightfully on the property; whereas, in the instant case the P. O. S. of A. hall was not set apart for the use of the employees as such, but for the use of the Patriotic Order Sons of America, a patriotic

secret order to which any male citizen of the United States of good moral character was eligible for membership.

In the case of *N. L. R. B. v. Cities Service Oil Co.*, 122 F. 2d 149, cited on page 19 of Petitioner's brief, the Court sustained an order of the Board requiring the respondent to cease and desist from refusing passes to union representatives to go on board tankers in order to investigate and negotiate concerning grievances of the seamen, but required that the order be amended by the addition of the following clause: "But such passes are not required to be issued without a provision therein that they shall be forfeited if the holder uses his access to the vessels either to solicit membership in the Union or to collect dues." To the same effect is the ruling in the case of *Richfield Oil Corp. v. N. L. R. B.*, 143 F. 2d 860, cited on page 35 of Petitioner's brief, except that the clause required by the Court to be inserted in the order in the *Cities Service* case was already contained in the passes in the *Richfield* case. In *N. L. R. B. v. West Kentucky Coal Co.*, 116 F. 2d 816, cited on same page of brief, the Court enforced an order of the Board requiring the employer to cease and desist, *inter alia*, from "denying to its employees who reside in houses owned by the respondent the right to have any persons call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting or assisting, the respondent's employees or any of them in regard to the rights of said employees under the Act to self-organization," etc. In other words, it was held that an employee had a right to choose his guests in his home, a not unreasonable ruling in no way militating against respondents' contention in the instant case.

Rights of employees are not more sacred than the rights of employers. In recent years, emphasis has been placed on certain rights—of free speech, freedom of the press; freedom

of religion, etc. But none of these has any greater force or higher sanction than the rights of private property. From Magna Charta on down, the individual has been guaranteed against disseisin of his property. Under these guaranties, no man, nor the government itself or any branch thereof, can compel individuals or corporations to give up their property to any private person or organization, or to the government itself but by due process of law. The order of the Board in this case would require the owners of this building, erected off the mill premises of any of them, wholly unconnected with the operations of the plants of any of them, built for a post office, stores and a lodge hall for a national patriotic order, to hand over a portion of it to a labor union at any time, now or hereafter, on demand. No amount of rationalization can free such a procedure from the ban of constitutional condemnation.

ACT MUST OPERATE WITHIN SPHERE OF CONSTITUTIONAL AUTHORITY.

As the lower court stated in its opinion: "There can be no doubt that if such a compulsion were exercised by the government for its own purposes, there would be a deprivation of property without due process of law, or a taking of private property for public use without just compensation in contravention of the Fifth Amendment to the Federal Constitution; and certainly if the surrender of the property against the will of the owner were compelled by any private person other than a labor union no one would deny that a deprivation of property without due process of law had occurred."

There is no question here of taking private property for public use. The questions are, can private persons take private property for private use? If the owner refuses to consent,

can the court compel him to do so? Whether the property is to be used for a month or a year, or for only an afternoon, the principle is the same.

No employee of any of the respondents sought permission to use the hall for the January 1945 meeting. Harris, the union organizer, sought it. He sought to obtain the use of the hall by virtue of no right apart from the National Labor Relations Act. It was under that act that he claimed the right. The Act does not specifically confer the right on labor unions to appropriate private property. If it did, no one would contend that it was not unconstitutional. It is contended, however, that the Act confers the right by implication. If it does, it is as unconstitutional as if it conferred it by explicit terms.

The United States has the right to take private property for public use by paying for it. It has no right to take private property for private use, pay or no pay.

The power of Congress to regulate commerce undoubtedly carries with it power over all the means and instrumentalities by which commerce is carried on, but these means and instrumentalities must be such as do not violate rights guaranteed by the Constitution. They also must bear a reasonable relation to the main and controlling purpose of the enactment which in this case is the regulation of commerce.

There is no conflict in the instant case between Article I of the Constitution, which grants to Congress the power to regulate commerce, and Amendment 5, which declares that no person shall be deprived of life, liberty, or property without due process of law. But there is conflict between the actions of the National Labor Relations Board and Amendment 5.

Congress undoubtedly had the power to pass the Act under its power to regulate commerce. It did not have the

power, nor did it undertake by the Act, to cancel out the rights guaranteed by the 5th Amendment. The Board, acting under the powers granted it by the Act, undertakes to go beyond the powers granted. It undertakes to deprive a person of his property without due process of law, which the Constitution forbids.

While it is true that the power of Congress to regulate commerce carries with it power over the means and instrumentalities by which commerce is carried on, it is no less true that these means and instrumentalities must be such as do not violate rights guaranteed by the Constitution. They also must bear a reasonable relation to the main and controlling purpose of the enactment, which in this case is the regulation of commerce.

The Respondents do not question the constitutionality of the Act. They do not deny that there is substantial connection between the object sought to be obtained and the means provided to accomplish that purpose. Their complaint is that the actions of the Board in this case went beyond the powers granted it by Congress (or that Congress could have granted it) and infringed the constitutional rights of the Respondents.

The power to regulate interstate commerce is subject to all the limitations imposed by the Constitution, including the Fifth Amendment. *Monongahela Navigation Co. v. United States;* 148 U. S. 312, 336; *United States v. Chicago M. & St. P. R. Co.*, 282 U. S. 311; *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330. In *N. L. R. B. v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 33-34, the Court held that the "National Labor Relations Act, so far as it safeguards the right of employees to self-organize and to select representatives of their own choosing for collective bargaining or other mutual protection, without restraint or coercion by

their employer, does not invade the constitutional rights of employers and employees." But no court has ever said that the Board's action are not circumscribed by the Constitution.

It was said in the *Jones and Laughlin* case that the Act might be construed so as to operate within the sphere of constitutional authority as it purports to reach only what might be deemed to burden or obstruct interstate or foreign commerce, and thus qualified it must be construed as contemplating the exercise of control within constitutional bounds.

If the Board had decided that the labor organizer or the Stowe employees had the right, in order to enjoy their right to assemble for organizational purposes, to deprive some person of his life or liberty without due process of law, and had upheld such conduct, would the court have sustained the Board? Certainly not. Yet the constitutional guaranty against deprivation of property and that against deprivation of life and liberty are linked together in the same sentence. One is as strong as the other.

The cases of *Euclid v. Ambler Realty Co.*, 272 U. S. 365, and the other cases cited along with it on page 25 of the Petitioner's brief to sustain the position that the Constitution does not protect Respondents' hall from being taken over by the union for a meeting do not sustain the position.

Those cases are based on the police power of states or the analogous power of the federal government, or on war powers.

The Petitioner argues that there is no showing that if the Union had been permitted the use of the hall the owners would not have suffered any inconvenience or interference either with their business or with any uses which they desired to make of the hall, and that, therefore, the permission should have been granted. The right to invade another's property is

not determined by the amount of damage the invader might do. He might do damage or he might not. The unlikelihood of a visitor to damage the home has no bearing on the right of the householder to refuse to permit him to enter.

If any private person or organization other than a union or employee had conceived that they had a right to requisition the Respondents' property, the state courts could have determined the issue. But the union invokes the National Labor Relations Act and calls on the Federal Government to compel the Respondents to turn over their property to it, a private organization. The Board says the Respondents did wrong—violated the law by not permitting the union organizer to walk in and take over the hall without permission of the owners and without any prior legal proceedings to determine his right to do so. The Board says, in effect, that the organizer had a right to do that, and, what's more, that any labor union has the right at any time in the future to take over the hall and hold a union meeting in it without asking anybody's permission. The Circuit Court disagrees, and the Board asks this Court to overrule the Circuit Court of Appeals and uphold the Board's action.

We submit that neither the Board, an agency of the government, nor the courts, a branch of the government, has the power under the Constitution to authorize the taking of private property for a private use.

If constitutional security is forced to give way for an instant to the pressure of a powerful group, thereafter other groups will claim the same privilege, and the end will be near for constitutional guaranties. Under our system of government and law, the rights of private property have been held to be inviolate. They are guaranteed by our fundamental charter. Yet in this case we have the government itself, through one of its agencies, trying to whittle away those

rights. The rights of labor should be protected, but not by destroying rights which are guaranteed to employer and employee alike.

MOTIVE IS NOT CONTROLLING FACTOR.

In division II of the Petitioner's brief the argument is made that even if the Respondents otherwise had the right to refuse the use of the hall for a union meeting, yet, if the refusal was motivated by a desire to impede unionization, this made their refusal illegal. We submit that such is not the law, and that the cases cited by the Petitioner do not sustain the position. Even if the Respondents' refusal to permit the use of the hall was motivated by a desire to impede unionization, this did not nullify the constitutional guaranty against the deprivation of their property without due process. Nor does the Act seek to prohibit evil intent. *F. W. Poe Mfg. Co. v. N. L. R. B.*, C. C. A. 4, 1941, 119 F. 2d 45; *N. L. R. B. v. Illinois Tool Works*, C. C. A. 7, 1946, 153 F. 2d 811; *Western Cartridge Co. v. N. L. R. B.*; C. C. A. 7, 1943, 134 F. 2d 240; *N. L. R. B. v. John & Ollier Eng. Co.*, C. C. A. 7, 1941, 123 F. 2d 589; *Indianapolis Power & Light Co. v. N. L. R. B.*, C. C. A. 7, 1941, 122 F. 2d 757.

In the instant case the lower court said: "It is equally clear that in the matter now before us the employer has not interfered with, restrained or coerced its employees in the exercise of their rights" (R. 140). And, further: "In the pending case, there was no evidence of any interference with or restriction upon the men in their communications on labor matters either with each other or with the agents of the union, in the homes of the men or on the streets of the town, or for that matter in the company's plant itself; and we think that the

Board had no authority to compel the companies to surrender their other property against their will for uses of which they did not approve, since the Board's power in this direction, is limited by a constitutional provision of great importance under our form of gavernment."

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision below should be affirmed.

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